

Stricken language would be deleted from and underlined language would be added to present law.  
Act 586 of the Regular Session

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

As Engrossed: H3/3/21 H3/17/21  
**A Bill**

HOUSE BILL 1468

By: Representative Jett  
By: Senator B. Johnson

**For An Act To Be Entitled**

AN ACT TO AMEND THE LAWS PERTAINING TO THE  
ADMINISTRATION OF STATE TAXES; TO AMEND THE  
ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO  
AMEND THE PROCEDURES FOR TAXPAYER JUDICIAL RELIEF; TO  
CREATE THE INDEPENDENT TAX APPEALS COMMISSION ACT;  
AND FOR OTHER PURPOSES.

**Subtitle**

TO CREATE THE INDEPENDENT TAX APPEALS  
COMMISSION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 26, Chapter 18, is amended to add an  
additional subchapter to read as follows:

Subchapter 11 – Independent Tax Appeals Commission Act

26-18-1101. Title.

This subchapter shall be known and may be cited as the “Independent Tax  
Appeals Commission Act”.

26-18-1102. Legislative purpose.

(a) The state shall create, within the Department of Inspector  
General, an independent agency with tax expertise to resolve disputes between  
the Department of Finance and Administration and taxpayers before requiring  
the payments of the amount in issue.



(b) By establishing the Tax Appeals Commission as an independent tax tribunal within the executive branch of government, this subchapter provides taxpayers with a means of resolving controversies with the Department of Finance and Administration before a neutral body.

26-18-1103. Legislative intent – Construction.

This subchapter shall be interpreted and construed to further the intent of the General Assembly to provide the people of Arkansas with an independent tax appeals commission to hear and resolve tax disputes between taxpayers and the Department of Finance and Administration.

26-18-1104. Definition.

As used in this subchapter, "taxpayer" means an individual or entity that:

- (1) Is challenging the state's taxing jurisdiction over the taxpayer; or
- (2) Has standing to challenge a decision by the Department of Finance and Administration:
  - (A) Imposing liability for a tax, penalty, or interest;
  - (B) Denying a credit or deduction;
  - (C) Denying a refund, credit, or incentive claim or application;
  - (D) Canceling, refusing, or revoking a license or permit under § 26-18-601, § 26-52-803, § 26-55-219, § 26-55-224, § 26-55-231, § 26-56-204, § 26-56-311, § 26-57-413, § 26-57-419, or § 26-62-204;
  - (E) Closing a noncompliant taxpayer's business;
  - (F) Relating to a jeopardy assessment;
  - (G) Seizing a vending device or a coin-operated amusement device; or
  - (H) Taking any other action that provides a taxpayer the right to a hearing with the Tax Appeals Commission under state law.

26-18-1105. Tax Appeals Commission – Creation.

(a)(1) The Tax Appeals Commission is created within the Department of Inspector General and shall be under the direction, control, and supervision

of the Secretary of the Department of Inspector General.

(2) Notwithstanding subdivision (a)(1) of this section, the commission shall independently decide matters before the commission.

(b) The commission shall:

(1) Be separate from and independent of the authority, control, and supervision of the Department of Finance and Administration; and

(2) Have a seal.

26-18-1106. Appointment of commissioners.

(a)(1) The Tax Appeals Commission shall consist of three (3) commissioners who are subject to the requirements of § 26-18-1107.

(2) Commissioners shall be selected from a pool of candidates recommended as follows:

(A) The Arkansas Bar Association shall nominate three (3) individuals who are licensed to practice law in this state;

(B) The majority of the Arkansas Supreme Court shall nominate three (3) individuals who are:

(i) Licensed to practice law in this state; and

(ii) Certified as a certified public accountant in this state; and

(C) The Arkansas Society of Certified Public Accountants shall nominate three (3) individuals who are certified as a certified public accountant in this state.

(3) The Governor shall appoint one (1) commissioner from each pool of candidates nominated under this subsection.

(b) The Chief Commissioner of the Tax Appeals Commission shall:

(1) Be appointed from the pool of candidates nominated by the Arkansas Supreme Court;

(2) Meet the requirements stated in § 26-18-1107 for the position of chief commissioner;

(3) Act as the executive officer of the commission;

(4) Be subject to the same provisions of law as commissioners;

(5) Be charged with the administration of the commission;

(6) Apportion among the commission all causes, matters, and hearings coming before the commission;

(7) Take any action necessary to enable the commission to

properly exercise the duties, functions, and powers of the commission under this subchapter; and

(8) Submit an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chair of the House Committee on Judiciary, the Chair of the Senate Committee on Judiciary, the cochairs of the Legislative Council, the Governor, and the Secretary of the Department of Inspector General that contains the following information for the year that is the subject of the report:

(A) The case load of the commission;

(B) The number of petitions filed;

(C) The number of claims settled;

(D) The number of decisions the commission rendered;

(E) The number of decisions rendered:

(i) In favor of the Department of Finance and Administration;

(ii) In favor of the taxpayer; and

(iii) Partially in favor of the department and partially in favor of the taxpayer;

(F) The number of matters heard:

(i) In person;

(ii) By teleconference or videoconference;

(iii) Using a combination of in-person and either teleconference or videoconference means; and

(iv) Solely on the documents filed with the commission; and

(G) The average time for a claim to be processed from the petition being filed to a decision being rendered, calculated for each type of hearing conducted by the commission.

(c) Each commissioner:

(1) Is appointed to a term of nine (9) years; and

(2) Shall not serve more than two (2) terms.

(d) Each commissioner shall receive an annual salary and benefits comparable to the salary and benefits provided to state district court judges.

(e) Once appointed, each commissioner shall:

(1) Continue his or her term until the:

(A) Commissioner is removed from his or her position under subsection (g) of this section;

(B) Commissioner is not appointed to a second term;

(C) Commissioner's final term expires;

(D) Commissioner retires his or her position;

(E) Commissioner relinquishes his or her position; or

(F) Commissioner is unable to perform his or her duties on a long-term basis; and

(2)(A) Take an oath or make an affirmation that he or she will faithfully discharge his or her duties under this subchapter.

(B) The oath or affirmation required under subdivision (e)(2)(A) of this section shall be filed with the Secretary of State's office.

(f)(1) If a vacancy occurs on the commission, the Governor shall appoint a commissioner to fill the vacancy.

(2) If the vacant position is one (1) that was filled by a candidate nominated by:

(A) The Arkansas Bar Association, the Arkansas Bar Association shall nominate three (3) individuals who are licensed to practice law in this state;

(B) The majority of the Arkansas Supreme Court, the majority of the Arkansas Supreme Court shall nominate three (3) individuals who are:

(i) Licensed to practice law in this state; and

(ii) Certified as a certified public accountant in this state; and

(C) The Arkansas Society of Certified Public Accountants, the Arkansas Society of Certified Public Accountants shall nominate three (3) individuals who are certified as a certified public accountant in this state.

(g)(1) The Governor may remove a commissioner for:

(A) Neglect of duty;

(B) Inability to perform duties; or

(C) Malfeasance in office.

(2) The Governor shall provide notice and an opportunity to be heard before removing a commissioner.

(h) A commissioner shall conduct himself or herself in an impartial

manner and may withdraw from a hearing under this subchapter at any time if the commissioner deems himself or herself disqualified from performing his or her duties in an impartial manner.

(i)(1) Except as provided in subdivision (i)(2) of this section, a commissioner shall not:

(A) Engage in a business or be employed outside of his or her position as commissioner; or

(B) Hold office or a position of profit in this state or a political subdivision of this state, another state, or the United States of America.

(2) A commissioner may own an interest in a business entity and earn income from incidental teaching and scholarly activities, unless owning the interest or earning income from the incidental teaching and scholarly activities conflicts with his or her duties as an impartial commissioner under this subchapter.

(3) A commissioner shall withdraw from hearing a matter if he or she is related to the taxpayer or owns an interest in the business of the taxpayer.

(j) If all of the commissioners have withdrawn from hearing a matter under this section, the Governor shall appoint a special master to act as a commissioner in the matter.

26-18-1107. Qualifications of commissioners.

(a) Each commissioner of the Tax Appeals Commission shall:

(1) Be a qualified elector of the State of Arkansas;

(2) Be either licensed to practice law in the state or certified as a certified public accountant in the state; and

(3) Possess substantial knowledge of Arkansas tax law.

(b) In addition to meeting the requirements of subsection (a) of this section, the Chief Commissioner of the Tax Appeals Commission shall:

(1) Be licensed to practice law in the state;

(2) Have been engaged in the private practice of law or employed in the private sector, or both, for at least five (5) of the immediately preceding ten (10) years before the chief commissioner's first appointment to the commission; and

(3) Be licensed as a certified public accountant in the state.

26-18-1108. Location of the Tax Appeals Commission – On-site observation.

(a) The principal office of the Tax Appeals Commission shall be located in:

(1) Little Rock, Arkansas; and

(2) A building that is separate from any building in which a division of the Department of Finance and Administration is located.

(b) To provide taxpayers a reasonable opportunity to appear before the commission, the commission may conduct its hearings at:

(1) Its principal office; and

(2) Buildings or facilities, or both, leased or owned by state or local public agencies or entities within the state.

(c)(1) The commission may contract only with state and local public agencies or entities in the State of Arkansas to arrange for hearing rooms, chambers, offices, or other appropriate facilities for the commission's principal office in Little Rock and for hearings not held at the commission's principal office.

(2) The limitation stated in subdivision (c)(1) of this section does not apply to teleconferencing, videoconferencing, or similar electronic means that may allow for remote participation in commission proceedings.

(d) With the consent of the taxpayer and with all parties invited to observe, the commission may conduct on-site observation of tangible personal property, real property, and activities that are relevant to a controversy.

26-18-1109. Employees.

(a) The Tax Appeals Commission:

(1) May employ a clerk, an assistant, and other employees as necessary to carry out the duties of the commission; and

(2) Shall employ:

(A)(i) A staff attorney.

(ii) The duties of the staff attorney shall include without limitation assisting the commissioners with drafting decisions; and

(B) An accountant who has experience in tax issues related to manufacturing and business.

(b) An employee of the commission shall not act as an attorney, a

representative, or an accountant for a taxpayer in a matter involving a tax imposed or levied under state law by the Department of Finance and Administration or by any other state or local public agency.

26-18-1110. Jurisdiction.

(a) The Tax Appeals Commission has administrative jurisdiction to:

(1) Except as otherwise provided in this section, hear disputes involving all state taxes administered by the Secretary of the Department of Finance and Administration;

(2) Hear a matter properly before the commission regardless of whether the taxpayer has paid to the Department of Finance and Administration some or all of the disputed tax or other amounts before or during the pendency of proceedings before the commission;

(3) Consistent with a decision issued by the commission, compel the secretary to:

(A) Issue a final assessment;

(B) Issue a refund;

(C) Reduce, set aside, alter, change, or remedy an action by the department that is subject to appeal, if appropriate under state law; or

(D) Take other appropriate action; and

(4)(A) Except as provided in subdivision (a)(4)(B) of this section, extend a deadline provided under this subchapter.

(B) The commission shall not extend the deadline for:

(i) A taxpayer to file a petition under § 26-18-1113; or

(ii) The commission to issue a decision, except as otherwise provided under § 26-18-1116(b).

(b) The commission does not have jurisdiction to:

(1) Hear disputes involving taxes that are excepted from the Arkansas Tax Procedure Act under § 26-18-102;

(2) Decide questions regarding the constitutionality of the application of statutes to a taxpayer or the constitutionality of rules promulgated by the department;

(3) Hear a claim for protection against enforcement of an illegal exaction under Arkansas Constitution, Article 16, § 13;

(4) Hear or decide claims for which the Office of Hearings and Appeals has issued an administrative decision; or

(5) Hear or decide a claim that is the subject of pending litigation.

(c) Upon the creation of the commission:

(1) The Office of Hearings and Appeals shall hear a proceeding resulting from an action or decision by the secretary, including without limitation the issuance of a proposed assessment, a refund claim denial, or any other matter brought by a taxpayer, that was issued before January 1, 2023;

(2) The commission shall hear a proceeding resulting from an action or decision by the secretary, including without limitation the issuance of a proposed assessment, a refund claim denial, or any other matter brought by a taxpayer, that was issued on or after January 1, 2023; and

(3) A taxpayer that has a matter pending before the Office of Hearings and Appeals for which a hearing or prehearing has not been held may elect to have the taxpayer's matter transferred to the commission.

26-18-1111. Settlement of tax disputes.

(a) A taxpayer and the Department of Finance and Administration may settle or compromise controversies at any time under § 26-18-705.

(b) If a matter is settled after a petition has been filed with the Tax Appeals Commission under this subchapter, the parties shall notify the commission so that the matter is withdrawn from consideration by the commission.

26-18-1112. Service of process.

(a) Mailing by first class mail to any of the following constitutes service on the other party under this subchapter:

(1) The address of the taxpayer given on the taxpayer's petition, if the taxpayer does not have a representative of record;

(2) The address of the taxpayer's representative of record; or

(3) The address designated by the Department of Finance and Administration as the proper place of service on the department.

(b) The Tax Appeals Commission may:

(1)(A) Prescribe other methods of service of process.

(B) Any additional methods of service of process prescribed under subdivision (b)(1)(A) of this section shall be prescribed by rule;

(2) Establish methods of electronic filing and service of process; and

(3) Order that notice be given to additional persons.

26-18-1113. Pleadings.

(a)(1) A taxpayer may commence an action under this subchapter by filing a petition with the Tax Appeals Commission protesting an action or decision by the Secretary of the Department of Finance and Administration, including without limitation the issuance of a proposed assessment under § 26-18-403 or a refund claim denial under §§ 26-18-507 and 26-36-315.

(2) The commission shall not impose a filing fee for petitions filed with the commission.

(b)(1) A petition under subsection (a) of this section shall:

(A) Be filed with the commission no later than ninety (90) days from the date the Department of Finance and Administration issues a proposed assessment or refund claim denial or takes other action or proposed action that the taxpayer is protesting; and

(B) Contain:

(i) Facts sufficiently clear to identify the taxpayer and the taxpayer's reasons for opposing the proposed assessment, denial of a claim for refund, or other action of the secretary; and

(ii) The specific items at issue.

(2) The commission shall notify and serve a copy of the petition on the department within fifteen (15) days of receipt of the petition by the commission.

(c)(1) The department shall file an answer to a petition filed under this section within sixty (60) days of receipt of the notice from the commission under subdivision (b)(2) of this section.

(2)(A) The department shall serve a copy of the answer on the taxpayer's representative, or, if the taxpayer is not represented, on the taxpayer directly.

(B) An attorney's certification that the attorney sent the pleading by a means of service authorized under § 26-18-1112 is sufficient

proof of service under subdivision (c)(2)(A) of this section.

(d)(1) A taxpayer may:

(A) File a reply to an answer filed under subsection (c) of this section within thirty (30) days of the date the answer was served on the taxpayer or the authorized representative of the taxpayer; or

(B) Move for default judgment if no answer was filed.

(2) The taxpayer shall:

(A) Serve a copy of a reply filed under subdivision (d)(1) of this section on the authorized representative of the department; and

(B)(i) File proof of service of the reply filed under subdivision (d)(1) of this section with the reply.

(ii) A certification by the taxpayer or the authorized representative of the taxpayer stating that he or she sent the pleading by a means of service authorized under § 26-18-1112 is sufficient proof of service under subdivision (d)(2)(B)(i) of this section.

(e)(1) Within thirty (30) days after a reply has been filed or the deadline to file a reply has passed, the commission shall schedule a hearing to be held within ninety (90) days of the date the reply was filed or the deadline to file a reply passed.

(2)(A) Before scheduling a hearing under this section, the Chief Commissioner of the Tax Appeals Commission shall assign the proceeding to one (1) commissioner or to all available commissioners sitting en banc, depending on the nature and significance of the proceeding.

(B) There is a presumption that proceedings:

(i) For which the net amount of the tax deficiencies and claimed refunds in controversy does not exceed twenty-five thousand dollars (\$25,000), exclusive of interest and penalties, should be assigned to one (1) commissioner;

(ii) Identified in subsection (g) of this section should be assigned to one (1) commissioner; and

(iii) For which the net amount of the tax deficiencies and claimed refunds in controversy exceeds two hundred fifty thousand dollars (\$250,000), exclusive of interest and penalties, should be assigned to all commissioners sitting en banc.

(3) Before a hearing is held, the chief commissioner may reassign the proceeding to one (1) commissioner or to all commissioners

sitting en banc.

(f)(1) Either party may amend a pleading one (1) time without leave at any time before the period for responding to the pleading expires.

(2) After the period for responding to a pleading expires, a pleading may be amended only with the written consent of the adverse party or with the permission of the commission.

(3) The commission shall allow a party to file an answer or reply, or both, to an amended pleading, and the commission shall specify a deadline for filing the answer or reply, or both.

(4) A taxpayer shall not amend the taxpayer's petition after the expiration of the time for filing a petition if the amended petition would have the effect of conferring jurisdiction over a matter that would otherwise not come within the jurisdiction of the commission because of the statute of limitations or otherwise.

(5) The commission shall provide notice of an amended pleading to the adverse party.

(g) Except as provided in subdivision (e)(2)(B)(ii) of this section, this section does not apply to the following administrative hearings before the commission for which an expedited process is available:

(1) A jeopardy assessment by the secretary under § 26-18-402;

(2) A cancellation or refusal to issue, extend, or reinstate a license, permit, or registration under § 26-18-601;

(3) A decision by the secretary to close a noncompliant taxpayer's business under §§ 26-18-1001 and 26-18-1002;

(4) A joint refund offset under § 26-18-507 or § 26-36-315;

(5) A demand for an additional bond under § 26-55-224, § 26-56-204, or § 26-62-204;

(6) The revocation or cancellation of a license under § 26-55-231, § 26-56-311, § 26-57-413, or § 26-57-419;

(7) The confiscation of equipment under § 26-55-247; or

(8) The seizure or forfeiture of a vending device under § 26-57-1212.

26-18-1114. Stipulation.

The parties to a proceeding shall make every reasonable effort to stipulate all relevant and nonprivileged facts to the fullest extent to which

a complete or qualified agreement can or fairly should be reached.

26-18-1115. Hearings.

(a) A hearing under this subchapter:

(1) Shall be tried before one (1) or more of the appointed commissioners of the Tax Appeals Commission, as determined by the Chief Commissioner of the Tax Appeals Commission; and

(2) Is not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except as otherwise stated in this subchapter, the commission shall:

(1) Receive evidence;

(2) Conduct hearings; and

(3) Render decisions.

(c)(1) Hearings of the commission under this subchapter shall be:

(A) Conducted in accordance with the rules of practice and procedure promulgated by the commission under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(B) Confidential and closed to the public.

(2) The following are exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

(A) Tax returns, audit reports, information pertaining to any tax return or audit report, and other taxpayer information provided to the commission in relation to a dispute involving state taxes administered by the Secretary of the Department of Finance and Administration;

(B) Hearings held by the commission under this section;

and

(C) Files and records of the commission pertaining to an action filed by a taxpayer or the secretary under:

(i) This subchapter; or

(ii) The Arkansas Tax Procedure Act, § 26-18-101 et

seq.

(d)(1) The rules of evidence applicable to civil cases in state courts do not apply to hearings before the commission under this subchapter.

(2) A commissioner of the commission shall:

(A) Admit relevant evidence, including hearsay, if it is

probative of a material fact in controversy; and

(B) Exclude irrelevant and repetitious evidence.

(e) The rules of privilege recognized by state law apply to testimony provided in hearings before the commission under this subchapter.

(f)(1) Testimony in a hearing under this subchapter shall be given on oath or affirmation.

(2) A commissioner may designate one (1) or more of the employees of the commission to administer oaths.

(g) Either party may elect to hire a court reporter to be present and record a hearing before the commission.

(h) The burden of proof stated in § 26-18-313 shall apply to all matters before the commission.

(i)(1) For a proceeding assigned to one (1) commissioner, that commissioner shall be the presiding commissioner at the hearing.

(2) For a proceeding assigned to the commission en banc, the chief commissioner or the commissioner designated by the chief commissioner shall be the presiding commissioner at a hearing.

(j) Except in a case involving the denial of a claim for refund, the taxpayer shall have the right to have the taxpayer's case heard before paying any of the amounts asserted as due by the Department of Finance and Administration.

(k)(1) Except as provided in subdivision (k)(2) of this section, the commission shall schedule and hold a hearing as provided in § 26-18-1113.

(2) The commission shall schedule and hold a hearing:

(A) Under § 26-18-402, within five (5) business days after a taxpayer has filed a petition with the commission;

(B) Under § 26-18-601(b), within three (3) business days after a taxpayer has filed a petition with the commission;

(C) Under § 26-18-601(c), within twenty (20) calendar days after a taxpayer has filed a petition with the commission;

(D) Under § 26-18-1002, within fourteen (14) calendar days after a taxpayer has filed a petition with the commission;

(E) Under § 26-18-507(e)(1)(B)(ii) or § 26-36-315(c), within twenty (20) calendar days after a taxpayer has filed a petition with the commission;

(F) Under § 26-55-224, § 26-56-204, or § 26-62-204, within

twenty (20) calendar days after a taxpayer has filed a petition with the commission;

(G) Under § 26-55-231, § 26-56-311, § 26-57-413, or § 26-57-419, within twenty (20) calendar days after a taxpayer has filed a petition with the commission;

(H) Under § 26-55-247, within five (5) business days after a taxpayer has filed a petition with the commission; and

(I) Under § 26-57-1212, within five (5) business days after a taxpayer has filed a petition with the commission.

(3) The commission shall provide notice of an expedited hearing under subdivision (k)(2) of this section to the department at least two (2) business days before the hearing.

(1)(1) A taxpayer may elect to have the taxpayer's petition heard:

(A) In person;

(B) By teleconference;

(C) By videoconference;

(D) By any combination of in-person, teleconferencing, or videoconferencing means; or

(E) Solely upon the documents filed with the commission.

(2) The taxpayer shall make an election under subdivision (1)(1) of this section in the taxpayer's initial petition.

(3) If the taxpayer fails to make an election under subdivision (1)(1) of this section in the taxpayer's initial petition, the petition shall be set for an in-person hearing in Little Rock.

(4) The taxpayer may amend an election under this subsection:

(A) Up to the date the taxpayer's reply is filed or due to be filed; or

(B) With the consent of the commission after notice to the department and an opportunity to be heard.

(5) The department may elect to appear by teleconference or videoconference for a hearing.

(6) The commission may require a hearing by a means other than the means elected by the taxpayer for good cause or when it is in the interest of justice.

26-18-1116. Decisions.

(a)(1)(A) The Tax Appeals Commission shall render its decisions under this subchapter in writing.

(B) A decision of the commission under this section shall:

(i) Include without limitation concise findings of fact and conclusions of law; and

(ii) Grant relief, invoke remedies, and issue orders as the commission deems appropriate to carry out the commission's decision.

(2) For a proceeding assigned to one (1) commissioner, that commissioner shall prepare the written decision.

(3) For a proceeding assigned to the commission en banc, the Chief Commissioner of the Tax Appeals Commission or other commissioner designated by the chief commissioner shall prepare a written decision that reflects the view of the majority of the commissioners participating in the case.

(4) A decision issued under this section shall be published under § 26-18-1119 and shall be served upon the parties by the commission.

(b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section, a decision of the commission under this section shall be issued no later than ninety (90) days after the submission of the last pleading or brief filed or the completion of the hearing, whichever is later.

(B) The commission shall issue a decision:

(i) Within five (5) business days after a hearing is concluded under § 26-18-402;

(ii) Within three (3) business days after a hearing is concluded under § 26-18-601(b);

(iii) Within five (5) business days after a hearing is concluded under § 26-18-1002;

(iv) Within twenty (20) calendar days after a hearing is concluded under § 26-18-507(e)(1)(B)(ii), § 26-18-601(c), or § 26-36-315(c);

(v) Within twenty (20) calendar days after a hearing is concluded under § 26-55-224, § 26-56-204, or § 26-62-204;

(vi) Within twenty (20) calendar days after a hearing is concluded under § 26-55-231, § 26-56-311, § 26-57-413, or § 26-57-419;

(vii) Within five (5) business days after a hearing

is concluded under § 26-55-247; and

(viii) Within five (5) business days after a hearing is concluded under § 26-57-1212.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, the commission may extend the period to render a decision under this section for a reasonable additional amount of time for good cause, which shall be documented in a letter mailed to the parties.

(B) The commission shall not extend the period to render a decision under subdivision (b)(1)(B) of this section with regard to a hearing held under § 26-18-1115(k)(2).

(c)(1) A decision of the commission has the same effect and shall be enforced in the same manner as a decision of a circuit court of the state, unless judicial review of the decision is pending.

(2) Unless the Secretary of the Department of Finance and Administration files with the commission a notice of intent to seek judicial review, the secretary shall comply with and implement a decision of the commission within thirty (30) days of service of the decision on the Department of Finance and Administration.

(d)(1) The interpretation of a taxing statute adopted by the commission in a proceeding en banc shall be followed by the commission in subsequent cases involving the same statute.

(2) The commission's application of a statute to the facts of a case in a proceeding en banc shall be followed by the commission in subsequent cases involving similar facts.

(3) The commission is not required to follow a prior interpretation or application of law by the commission if:

(A) The interpretation or application conflicts with an interpretation or application of Arkansas law by a federal court or Arkansas state court; or

(B) The prior decision of the commission was overturned on appeal.

26-18-1117. Judicial relief.

(a) A taxpayer may seek judicial relief from a decision of the Tax Appeals Commission by following the procedures stated in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b)(1) The Department of Finance and Administration may seek judicial relief from a decision of the commission by filing suit against the taxpayer in Pulaski County Circuit Court or in the circuit court of the county in which the taxpayer resides or has its principal place of business in the state.

(2) A taxpayer may remove a suit filed by the department to the circuit court of the county in which the taxpayer resides or has its principal place of business in the state.

(3) A matter subject to judicial relief under this section shall be tried de novo.

(c) An appeal will lie from the circuit court to the Supreme Court, as in other cases provided by law.

(d) The Arkansas Rules of Civil Procedure and § 16-56-126 concerning nonsuit and commencement of new actions apply to appeals under this section.

26-18-1118. Representation.

(a)(1) A taxpayer may be represented at a hearing pro se or by an authorized representative who has provided a completed power of attorney form to the Tax Appeals Commission in the manner prescribed by the commission.

(2) A completed power of attorney form shall:

(A) Be attached to the taxpayer's petition; or

(B) Accompany the authorized representative's entry of appearance if the taxpayer's authorized representative files an entry of appearance after the petition has been filed.

(3) If the taxpayer fails to attach a power of attorney to the petition, the commission shall allow the taxpayer thirty (30) calendar days to file the required power of attorney.

(4) Absent information indicating that the taxpayer has an authorized representative, the Department of Finance and Administration may communicate directly with the taxpayer.

(b) The department shall be represented by an authorized representative at a hearing.

26-18-1119. Publication of decisions.

(a) The Tax Appeals Commission shall index and publish a decision under this subchapter in the print or electronic form that the commission

deems best adapted for public convenience.

(b) All personally identifying taxpayer information shall be redacted before the publication of a decision under this subchapter.

(c) The publication of a decision under this subchapter shall be made permanently available and shall be an official report of the commission.

26-18-1120. Rules.

The Tax Appeals Commission shall promulgate rules and forms to:

(1) Carry out the intent and purpose of this subchapter; and

(2) Implement the duties assigned to the commission, including

without limitation rules:

(A) Governing pleadings and service of process requirements to commence a hearing under this subchapter and the practice and procedure rules of the commission;

(B) To provide for expedited proceedings;

(C) To establish guidelines for the redaction of personally identifying taxpayer information in published decisions; and

(D) To establish a procedure for petitions and hearings under:

(i) Section 26-18-402;

(ii) Section 26-18-601(b) and (c);

(iii) Section 26-18-1002;

(iv) Section 26-36-315;

(v) Section 26-55-219;

(vi) Section 26-55-224;

(vii) Section 26-55-231;

(viii) Section 26-55-247;

(ix) Section 26-56-204;

(x) Section 26-56-311;

(xi) Section 26-57-413;

(xii) Section 26-57-419;

(xiii) Section 26-57-1212; and

(xiv) Section 26-62-204.

SECTION 2. DO NOT CODIFY. Creation of Tax Appeals Commission – Abolition of Department of Finance and Administration Office of Hearings and

Appeals.

(a)(1) The Tax Appeals Commission shall be created by July 1, 2022.

(2) The initial commissioners shall be appointed by July 1, 2022.

(3) The Chief Commissioner of the Tax Appeals Commission shall be designated by July 1, 2022.

(4) The commission shall be ready to begin accepting and trying tax disputes by January 1, 2023.

(5) This act does not affect a hearing, prosecution, action, suit, or appeal, commenced in the judicial branch of government before the creation of the commission.

(b) Notwithstanding § 26-18-1106:

(1)(A) The initial commissioners appointed to the commission shall be selected from a pool of candidates with three (3) candidates recommended by each of the following:

(i) The Arkansas Bar Association;

(ii) The majority of the Arkansas Supreme Court; and

(iii) The Arkansas Society of Certified Public

Accountants.

(B) Each entity recommending candidates for commissioner under subdivision (b)(1)(A) of this section shall recommend at least one (1) candidate who is:

(i) Licensed to practice law in this state; and

(ii) Certified as a certified public accountant in this state; and

(2) The commissioners who are appointed during the creation of the commission shall be given initial terms of differing lengths as follows:

(A) One (1) of the commissioners who is initially appointed shall serve an initial term of three (3) years and shall be eligible for appointment to two (2) subsequent terms of nine (9) years after the initial term;

(B) One (1) of the commissioners who is initially appointed shall serve an initial term of six (6) years and may be appointed to one (1) subsequent term of nine (9) years after the initial term; and

(C) One (1) of the commissioners who is initially appointed shall serve an initial term of nine (9) years and shall be eligible

for appointment to one (1) subsequent term of nine (9) years after the initial term.

(c)(1) The Office of Hearings and Appeals shall conclude its decisions on tax disputes initiated before January 1, 2023, by May 31, 2023, and shall be fully closed by June 30, 2023.

(2) The Department of Finance and Administration shall retain the files of the Office of Hearings and Appeals, consistent with its current recordkeeping practices.

SECTION 3. Arkansas Code § 25-43-1003, concerning the Secretary of the Department of Inspector General, is amended to add an additional subsection to read as follows:

(g) The secretary shall appear at the request of the General Assembly or the Legislative Council to provide information concerning the Tax Appeals Commission or the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

SECTION 4. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the Tax Appeals Commission shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before December 1, 2022; or

(2) If approval under § 10-3-309 has not occurred by December 1, 2022, as soon as practicable after approval under § 10-3-309.

(b) The commission shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of December 1, 2022, so that the Legislative Council may consider the rules for approval before December 1, 2022.

SECTION 5. DO NOT CODIFY. Legislative intent – Contingent effectiveness.

(a) The General Assembly intends for this act to be effective only if the Arkansas Code is amended to make changes to current statutes concerning tax procedure and the hearing of tax appeals to enable to effective implementation of this act.

(b)(1) This act shall not become effective unless HB1705 of 2021 is

enacted during the Ninety-Third Regular Session of the General Assembly.

(2) If HB1705 of 2021 is not enacted during the Ninety-Third Regular Session of the General Assembly, this act expires retroactively upon the sine die adjournment of the Ninety-Third Regular Session of the General Assembly.

/s/Jett

**APPROVED: 4/6/21**